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June 24, 2024

By ECF

Honorable Lois Bloom
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Jean & Comack v. The Department of Education of the City of New York
24-cv-02264(NCM)(RML)

Dear Judge Bloom:

I am an Assistant Corporation Counsel in the office of Muriel Goode-Trufant, Acting Corporation Counsel for the City of New York, attorney for the Defendant, Department of Education of the City of New York (“DOE”) in the above-referenced action. Pursuant to your Honor’s Order dated June 13, 2024, Defendant respectfully requests the Court hold a pre-motion conference to discuss Defendant’s anticipated motion to dismiss the Complaint.

Pro se plaintiffs, Jean Jean and Kathleen Comack, are former DOE employees, both having been terminated for failing to comply with the DOE’s COVID-19 vaccine mandate (“Vaccine Mandate”). Plaintiffs brought this action pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §1981, §1983, and §2000. Specifically, Plaintiff Jean alleges religious discrimination and violation of First Amendment rights to free speech and religion, while both Plaintiffs allege violation of the Rehabilitation Act, violation of the Fourteenth Amendment of the United States Constitution, failure to accommodate, fraud in the inducement to deny plaintiffs their property and liberty rights to a due process, and violations of the New York State Constitution and New York State and City Human Rights Laws (“SHRL” and “CHRL,” respectively). See Complaint. Defendant respectfully submits that dismissal of the Complaint is warranted in this matter based the grounds set forth below.

First, both plaintiffs failed to timely file charges with the Equal Employment Opportunity Commission (“EEOC”), and failed to file notices of claim with the City, prior to seeking judicial intervention, therefore their Title VII, SHRL, and CHRL claims must be dismissed. Jadallah v. N.Y.C. Dep’t of Educ., 2024 U.S. Dist. LEXIS 58410, at *19 (E.D.N.Y. Mar. 28, 2024); Richard v. N.Y.C. Dep’t of Educ., 2017 U.S. Dist. LEXIS 50748, at *54 (E.D.N.Y. Mar. 31, 2017). Next, because numerous courts, including this one, have held that the Vaccine Mandate is entirely lawful, and does not violate either the United States or New York State Constitutions, all claims alleging constitutional or due process violations must be dismissed. Finally, Plaintiffs have failed to state a cause of action for discrimination or retaliation.

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For the foregoing reasons, the defendant respectfully requests that the Court hold a pre-motion conference. Thank you for your consideration of this request.

Respectfully submitted,

/s/

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Cc: via e-mail and first-class mail

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